

Fred W. Schwinn (SBN 225575)
CONSUMER LAW CENTER, INC.
12 South First Street, Suite 1014
San Jose, California 95113-2403
Telephone Number: (408) 294-6100
Facsimile Number: (408) 294-6190
Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff
LENORA GERALDINE ARAGON

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

LENORA GERALDINE ARAGON,

Plaintiff,

v.

PATENAUDE & FELIX, A
PROFESSIONAL CORPORATION, a
California corporation, and RAYMOND
ALCIDE PATENAUDE, individually and in
his official capacity,

Defendants.

Case No. C07-04403-JW-HRL

**JOINT CASE MANAGEMENT
STATEMENT AND FEDERAL RULE
OF CIVIL PROCEDURE 26(f)
DISCOVERY PLAN**

| | |
|------------|--|
| Date: | Not Set |
| Time: | Not Set |
| Judge: | Honorable James Ware |
| Courtroom: | 8, 4 th Floor |
| Place: | 280 South First Street San Jose, California |

The parties in the above-entitled action hereby submit this Joint Case Management Statement and Federal Rule of Civil Procedure 26(f) Discovery Plan for the initial case management conference to be scheduled in this matter.

1. Jurisdiction and Service

The basis for the Court's subject matter jurisdiction is federal question jurisdiction. No parties remain to be served.

2. Statement of Facts

a. Plaintiff's Statement

This case is brought by an individual consumer to address Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and of the Rosenthal

1 Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.33 (hereinafter
2 “RFDCPA”). The violations stem from Defendants’ communications attempting to collect a
3 consumer debt from Plaintiff. Correspondence between the parties has been attached to the
4 Complaint as exhibits.

5 Generally, Plaintiff is alleged to have owed a consumer debt which was sold, assigned or
6 otherwise transferred to Defendants. Thereafter, Defendants sent Plaintiff a letter in an attempt to
7 collect the alleged debt. Defendants’ collection letter states:

8 Unless you notify us within THIRTY (30) days after receiving this notice that you
9 dispute the validity of this debt or any portion thereof, this office will assume this
10 debt is valid. If you notify this office within THIRTY (30) days from receiving this
11 notice, this office will: obtain verification of the debt or obtain a copy of a judgment
12 and mail you a copy of such judgment or verification. If you request this office
within THIRTY (30) days after receiving this notice, this office will provide you
with the name and address of the original creditor, if different from the current
creditor.

13 Plaintiff contends that Defendants misrepresented Plaintiff’s right to obtain a copy of the
14 debt verification or judgment against her, in violation of 15 U.S.C. §§ 1692e and 1692e(10).

15 Plaintiff contends that Defendants misrepresented Plaintiff’s right to obtain the name and
16 address of the original creditor, if it is different than the current creditor, in violation of 15 U.S.C.
17 §§ 1692e and 1692e(10).

18 Plaintiff contends that Defendants failed to send Plaintiff a written notice containing a
19 statement that if Plaintiff notifies Defendants *in writing* within the thirty-day period that the debt,
20 or any portion thereof, is disputed, Defendants would obtain verification of the debt and that a copy
21 of the verification would be mailed to Plaintiff, in violation of 15 U.S.C. § 1692g(a)(4).

22 Plaintiff contends that Defendants failed to send Plaintiff a written notice containing a
23 statement that upon Plaintiff’s *written* request, Defendants would provide Plaintiff with the name
24 and address of the original creditor, if different from the current creditor, in violation of 15 U.S.C.
25 § 1692g(a)(5).

26 Plaintiff contends that Defendants communicated with third parties in connection with the
27 collection of a debt from Plaintiff without Plaintiff’s prior consent or the express permission of a
28 court of competent jurisdiction, in violation of 15 U.S.C. § 1692c(b), as well as Cal. Civil Code §§

1788.12(c), 1788.12(d), and 1788.17.

Plaintiff contends that Defendants' display and publication of Plaintiff's personal financial information to third parties in connection with the collection of a debt from Plaintiff is conduct the natural consequence of which is to harass, oppress or abuse Plaintiff, in violation of 15 U.S.C. § 1692d, as well as Cal. Civil Code §§ 1788.12(c), 1788.12(d), and 1788.17.

Plaintiff contends that Defendants published Plaintiff's personal financial information to third parties, in violation of 15 U.S.C. § 1692d(3), as well as Cal. Civil Code §§ 1788.12(c), 1788.12(d), and 1788.17.

Plaintiff contends that Defendants' display and publication of Plaintiff's personal financial information to third parties in connection with the collection of a debt from Plaintiff is unfair or unconscionable, in violation of 15 U.S.C. § 1692f, as well as Cal. Civil Code §§ 1788.12(c), 1788.12(d), and 1788.17.

b. Defendants' Statement

Defendant, Patenaude & Felix, A.P.C., is a law firm which was retained by Capital One Bank to represent it with respect to a delinquent credit card account opened by the Plaintiff. Defendant, Raymond A. Patenaude is an attorney with Patenaude & Felix, as well as a principal. Mr. Patenaude is also the person who executed the "dunning letter" which is the basis of this lawsuit.

Defendants disagree with the Plaintiff's contention that the "dunning letter" violates the FDCPA and/or the Rosenthal Act, and base their contention on the holding in the Ninth-Circuit case of *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078 (9th Cir. 2005), which held that it is improper to require that the dispute be in writing. It is Defendants' belief that by including language in the "dunning letter" sent to the Plaintiff that any dispute needs to be in writing goes against the holding in *Camacho*. Defendants also disagree with the Plaintiff's contention that the manner in which the "dunning letter" was mailed to the Plaintiff violated the FDCPA and/or Rosenthal Act.

3. Legal Issues

The principal legal issues which the parties dispute:

- a. Whether Defendants communicated with third parties in connection with the collection of a debt from Plaintiff without Plaintiff's prior consent or the

1 express permission of a court of competent jurisdiction, in violation of 15
2 U.S.C. § 1692c(b), and Cal. Civil Code §§ 1788.12(c), 1788.12(d), and
3 1788.17;

4 b. Whether Defendants' display and publication of Plaintiff's personal financial
5 information to third parties in connection with the collection of a debt from
6 Plaintiff is conduct the natural consequence of which is to harass, oppress or
7 abuse Plaintiff, in violation of 15 U.S.C. § 1692d, and Cal. Civil Code §§
8 1788.12(c), 1788.12(d), and 1788.17;

9 c. Whether Defendants published Plaintiff's personal financial information to
10 third parties, in violation of 15 U.S.C. § 1692d(3), and Cal. Civil Code §§
11 1788.12(c), 1788.12(d), and 1788.17;

12 d. Whether Defendants misrepresented Plaintiff's right to obtain a copy of the
13 debt verification or judgment against her, in violation of 15 U.S.C. §§ 1692e
14 and 1692e(10), and Cal. Civil Code § 1788.17;

15 e. Whether Defendants misrepresented Plaintiff's right to obtain the name and
16 address of the original creditor, if it is different than the current creditor, in
17 violation of 15 U.S.C. §§ 1692e and 1692e(10), and Cal. Civil Code §
18 1788.17;

19 f. Whether Defendants failed to send Plaintiff a written notice containing a
20 statement that if Plaintiff notifies Defendants *in writing* within the thirty-day
21 period that the debt, or any portion thereof, is disputed, Defendants would
22 obtain verification of the debt and that a copy of the verification would be
23 mailed to Plaintiff, in violation of 15 U.S.C. § 1692g(a)(4), and Cal. Civil
24 Code § 1788.17;

25 g. Whether Defendants failed to send Plaintiff a written notice containing a
26 statement that upon Plaintiff's *written* request, Defendants would provide
27 Plaintiff with the name and address of the original creditor, if different from
28 the current creditor, in violation of 15 U.S.C. § 1692g(a)(5), and Cal. Civil

Code § 1788.17; and

- h. Whether Defendants' display and publication of Plaintiff's personal financial information to third parties in connection with the collection of a debt from Plaintiff is unfair or unconscionable, in violation of 15 U.S.C. § 1692f, and Cal. Civil Code §§ 1788.12(c), 1788.12(d), and 1788.17.

4. Motions

There are no Motions pending at this time. However, Plaintiff will likely file a motion or motions for summary judgment or partial summary judgment. Although a final determination has not yet been made, if Defendants do file any Motion(s) it is believed that they will file a Motion for Summary Judgment and/or Summary Adjudication.

5. Amendment of Pleadings

At this time, Plaintiff does not anticipate amending the Complaint. Plaintiff reserves the right to seek leave of the Court to file an amended Complaint should Plaintiff discover additional facts or claims.

At this time, Defendants do not anticipate amending their Answers. Defendants reserve the right to seek leave of the Court to amend their Answers if Discovery, or additional information, warrants an amendment.

6. Evidence Preservation

Defendants have directed their relevant employees to preserve all documents, in paper or electronic form, related to the subject matter of this case. Plaintiff will preserve all documents related to the subject matter of this case.

7. Disclosures

a. Plaintiff's Statement

Plaintiff served formal written disclosures on October 23, 2007, as required by Fed. R. Civ. P. 26(a)(1).

b. Defendants' Statement

Defendants served their Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on November 15, 2007.

1 **8. Discovery**

2 **Plaintiff's Discovery:** Plaintiff will serve Interrogatories and Requests for Production of
3 Documents shortly.

4 **Defendants' Discovery:**

5 Defendants anticipate serving written Interrogatories, Production Demands and Requests for
6 Admissions on the Plaintiff. At this time, other than the Plaintiff, Defendants do not believe that
7 they will be deposing any other people. However, if Discovery reveals additional persons or entities
8 with information pertaining to this matter, Defendants reserve the right to depose those persons or
9 entities.

10 **9. Class Actions**

11 This case is not a class action. Plaintiff reserves the right to seek leave of the Court to file
12 an amended Complaint containing class allegations. Defendants reserve the right to oppose any
13 attempt to add class allegations.

14 **10. Related Cases**

15 The parties are not aware of any related cases at this time.

16 **11. Relief**

17 **a. Plaintiff's Statement**

18 The Plaintiff requests that this Court:

- 19 i. Declare that Defendants' collection letter violates the Fair Debt
20 Collection Practices Act, 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3),
21 1692e, 1692e(10), 1692g(a)(4), 1692g(a)(5) and 1692f;
- 22 ii. Declare that Defendant's collection letter violates the Rosenthal Fair
23 Debt Collection Practices Act, Cal. Civil Code §§ 1788.12(c),
24 1788.12(d) and 1788.17;
- 25 iii. Award Plaintiff statutory damages in an amount not exceeding
26 \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 27 iv. Award Plaintiff a statutory penalty in an amount not less than \$100
28 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b);

- v. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code §1788.17;
- vi. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.30(c) and 1788.17; and
- vii. Award Plaintiff such other and further relief as may be just and proper.

b. Defendants' Statement

Defendants respectfully request that this Court:

- i. Enter Judgment in favor of the Defendants;
- ii. Find that Defendants' "dunning letter" and the method in which it was mailed does/did not violate the FDCPA, 15 U.S.C. §§ 1692e, 1692e(10), 1692g(a)(4), 1692g(a)(5), 1692c(b), 1692d, 1692d(3) and/or 1692(f);
- iii. Find that Defendant's "dunning letter" and the method in which it was mailed does/did not violate the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.12(c); 1788.12(d) and/or 1788.17;
- iv. Award Defendants their costs of suit, and reasonable attorneys fees, pursuant to 15 U.S.C. §1692k(a)(3); and Cal. Civil Code § 1788.30(c); and
- v. Award Defendants such other relief as the Court deems just and proper.

12. Settlement and ADR

The parties have filed a Stipulation and Proposed Order selecting Mediation as the ADR process in this case.

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13. Consent to Magistrate Judge for All Purposes

The Parties have not consented to a Magistrate Judge for all purposes.

14. Other References

None at this time.

15. Narrowing of Issues

The Parties anticipate that resolution of motions may narrow the issues for determination.

16. Expedited Schedule

The parties do not believe that an expedited schedule is necessary.

17. Scheduling

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|--------------------------------------|----------------------------------|
| Initial Case Management Conference | Not Scheduled |
| Close of Fact Discovery | May 30, 2008 |
| Fed. R. Civ. P. 26(a)(3) Disclosures | June 17, 2008 |
| Last Day to File Dispositive Motions | July 21, 2008 |
| Opposition to Dispositive Motions | August 4, 2008 |
| Replies to Dispositive Motions | August 11, 2008 |
| Hearing on Dispositive Motions | August 25, 2008, at 9:00 a.m. |
| Final Pre-Trial Conference | September 15, 2008, at 3:00 p.m. |
| Jury Trial | October 6, 2008, at 9:00 a.m. |

18. Trial

The parties anticipate that the action can be ready for trial in October, 2008.

Estimated length of trial is 2-3 days.

19. Disclosure of Non-Party Interested Entities or Persons

a. Plaintiff's Statement

Pursuant to Civil L.R. 3-16, Plaintiff states, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

i. Lenora Geraldine Aragon, an individual residing in San Jose, California.

b. Defendants' Statement

Pursuant to Civil L.R. 3-16, Defendants state, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

i. Patenaude & Felix, A.P.C., an law firm located in San Diego County, California.

ii. Raymond A. Patenaude, an individual residing in San Diego County, California.

20. Other Matters

None at this time.

Dated: November 27, 2007

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.
Attorney for Plaintiff
LENORA GERALDINE ARAGON

Dated: November 27, 2007

/s/ Mathew B. Golding
Mathew B. Golding
Attorney for Defendants
PATENAUDE & FELIX, A
PROFESSIONAL CORPORATION,
and RAYMOND ALCIDE
PATENAUDE